

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

\* \* \*

JACK HENDERSON,

Plaintiff,

v.

DAVID FROBES, *et al.*,

Defendants.

Case No. 3:21-cv-00020-MMD-WGC

ORDER

This action began with an application to proceed *in forma pauperis* and a *pro se* civil rights complaint filed by Plaintiff Jack Henderson. (ECF No. 1-1, 6.) On August 20, 2021, the Court issued an order dismissing Henderson's complaint with leave to amend and directed Henderson to file an amended complaint within 30 days. (ECF No. 7.) The thirty-day period has now expired, and Henderson has not filed an amended complaint or otherwise responded to the Court's order.

Henderson's application to proceed *in forma pauperis* is granted. (ECF No. 6.) Based on the information Henderson provided regarding his financial status, the Court finds that Henderson is not able to pay an initial installment payment toward the full filing fee pursuant to 28 U.S.C. § 1915. Henderson will, however, be required to make monthly payments toward the full \$350.00 filing fee when he has funds available.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint);

1 *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to  
2 comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone*  
3 *v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure  
4 to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)  
5 (affirming dismissal for lack of prosecution and failure to comply with local rules).

6 In determining whether to dismiss an action for lack of prosecution, failure to obey  
7 a court order, or failure to comply with local rules, the court must consider several factors:  
8 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to  
9 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
10 disposition of cases on their merits; and (5) the availability of less drastic alternatives.  
11 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at  
12 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

13 Here, the Court finds that the first two factors, the public's interest in expeditiously  
14 resolving this litigation and the Court's interest in managing the docket, weigh in favor of  
15 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of  
16 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay  
17 in filing a pleading ordered by the court or prosecuting an action. See *Anderson v. Air*  
18 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring the  
19 disposition of cases on their merits—is greatly outweighed by the factors weighing in favor  
20 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey  
21 the court's order will result in dismissal satisfies the “consideration of alternatives”  
22 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d  
23 at 1424. The Court's order requiring Henderson to file an amended complaint within thirty  
24 days expressly stated: “It is further ordered that, if Henderson fails to file an amended  
25 complaint curing the deficiencies outlined in this order, this action will be dismissed with  
26 prejudice for failure to state a claim.” (ECF No. 7 at 8.) Thus, Henderson had adequate  
27 warning that dismissal would result from his noncompliance with the Court's order to file  
28 an amended complaint within 30 days.

1 It is therefore ordered that Henderson's application to proceed *in forma pauperis*  
2 (ECF No. 6) is granted. Henderson is not required to pay an initial installment of the filing  
3 fee. In the event that this action is dismissed, the full filing fee must still be paid pursuant  
4 to 28 U.S.C. § 1915(b)(2).


5 It is further ordered that the movant herein is permitted to maintain this action to  
6 conclusion without the necessity of prepayment of any additional fees or costs or the  
7 giving of security therefor.

8 It is further ordered that Pursuant to 28 U.S.C. § 1915, as amended by the Prison  
9 Litigation Reform Act, the Nevada Department of Corrections will forward payments from  
10 the account of *Jack Henderson*, # 60713 to the Clerk of the United States District Court,  
11 District of Nevada, 20% of the preceding month's deposits (in months that the account  
12 exceeds \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk of  
13 the Court will send a copy of this order to the Finance Division of the Clerk's Office. The  
14 Clerk will send a copy of this order to the attention of Chief of Inmate Services for the  
15 Nevada Department of Corrections, P.O. Box 7011, Carson City, NV 89702.

16 It is further ordered that this action is dismissed with prejudice based on  
17 Henderson's failure to file an amended complaint in compliance with this Court's August  
18 20, 2021, order.

19 The Clerk of Court is directed to enter judgment accordingly and close this case.

20 DATED THIS 28<sup>th</sup> Day of September 2021.

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25 MIRANDA M. DU  
26 CHIEF UNITED STATES DISTRICT JUDGE  
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